

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 16**

Garland, Texas

**GARCIA TECHNICAL SERVICES**

Employer

**and**

Case No. 16-RC-10656

**SHEET METAL WORKERS  
INTERNATIONAL ASSOCIATION LOCAL 68**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

**I. The Petition and Issue Presented**

The Petitioner seeks to represent all regular full-time employees doing sheet metal work and to exclude all other employees, including plumbers and pipefitters, management, clerical workers, guards, and supervisors as defined in the Act. The Employer contends that the petitioned-for unit is inappropriate and that all plumbers and one support employee (Gustavo Gonzalez) should be included in any unit found appropriate. Neither the Petitioner nor Employer argue that the remaining two support employees should be included in any unit found appropriate. Thus, the issue at hand is whether the petitioned-for unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

## **II. History of Collective Bargaining**

Both parties stipulate that the Petitioner currently represents the Employer's five sheet metal employees and that the Plumbers and Steamfitters' Local Union No. 100 (herein Plumbers' Union) currently represents the Employer's approximately 57 plumbers. The sheet metal employees and plumbers are the only classifications in their respective units. The record reflects that the Employer's collective bargaining relationships with the Petitioner and the Plumbers' Union are based on Section 8(f) agreements. The parties stipulate that the Employer's collective bargaining relationship with the Petitioner began on May 1, 2000 and is scheduled to expire on April 25, 2005. The parties further stipulate that Employer's collective bargaining relationship with the Plumbers' Union began in 1999 and is scheduled to expire on April 25, 2005.

## **III. The Regional Director's Findings**

I have considered the evidence adduced during the hearing and the arguments advanced by both parties. For the reasons set forth below, I find that the employees in the petitioned-for unit share a sufficient community of interest constitute an appropriate unit and, additionally, constitute a craft unit. Accordingly, I will direct an election in a unit consisting of approximately five employees.

To lend a context to my discussion of the issues, I will first provide an overview of the Employer's operations and supervisory structure. Then, I will discuss the background evidence. Finally, I will relate the reasoning that supports my findings.

## **IV. Overview of Employer's Operations and Supervisory Structure**

The Employer is a mechanical contracting company that specializes in purity process piping. Currently, the Employer employs approximately 65 employees. Of the approximately

65 employees, 5 are represented by the Petitioner, 57 are represented by the Plumbers' Union, and 3 are non-union, support employees.

Pete Garcia is the president and owner. Brian Robinson is the operations manager. Steve Curtis, special projects manager, is the primary supervisor for the sheet metal employees and plumbers. Buster Miller is the superintendent over the support employees. Randall Robinson, Terrence Robinson, and Ricky Gatlyn are additional plumber supervisors.

All supervisors report directly to Brian Robinson, who also communicates with customers and schedules the work. Curtis and Miller possess the authority to discipline employees. Randall Robinson, Terrence Robinson, and Gatlyn possess the authority to direct and discipline employees. The parties stipulate that Curtis, Miller, Randall Robinson, Terrence Robinson, and Gatlyn are supervisors within the meaning of Section 2(11) of the Act.

## **V. Background**

Traditionally, sheet metal employees perform HVAC and exhaust work. The Employer's sheet metal employees are involved in, for example, installing PSP piping and tying onto headers. If air is flowing through a particular piece of tubing, the sheet metal employees will generally claim possession of the work. In completing their tasks, sheet metal employees use some of the same tools as plumbers, such as band saws. However, they also use their own tools, including a sheet metal hammer, snips, and a whitney punch. One of the five sheet metal employees serves as the foreman, and Curtis is their supervisor. The Employer employs three journeymen, one classified, and one pre-apprentice trainee (herein PAT). They are scheduled to work Monday through Friday, from 7:00 a.m. until 5:00 p.m. Although the record does not reflect exact wage rates, journeymen earn the highest wages (approximately \$28.31 per hour, and \$1.00 per hour more for the foreman), followed by the classified (at minimum, approximately

40% of the journeyman rate), and then the PAT. Sheet metal employees have their own four-year apprenticeship program where they learn skills particular to their trade and test to become a journeyman.

Plumbers are responsible for much of the piping and plumbing and also specialize in, for example, acid work and cooling water. Specifically, plumbers take part in such duties as running schedule 80 PVC pipe, orbital welding, and building headers. As stated previously, plumbers share some tools with sheet metal employees but also use their own tools, such as a specialized hammer, when doing a job. Plumbers report to three mid-level plumber supervisors and, ultimately, to Curtis. The record reflects that plumbers work Monday through Friday, 8:00 a.m. until 4:30 p.m., but does not reflect the plumbers' current wages. Plumbers are separated into journeymen and apprentices. Upon successful completion of a five-year apprenticeship program run jointly by a labor-management committee, apprentices graduate to journeymen.

Support employee Gustavo Gonzalez worked previously for the Employer as a plumber apprentice before leaving. In this capacity, Gonzalez installed piping and worked with exhaust systems. When Gonzalez returned to the Employer, he took on the position of support employee and became responsible for an array of duties. For example, Gonzalez sees that broken tools (that he is unable to repair) are fixed, stocks material, orders material, and serves as a mechanic. He currently works in the office and reports to Miller. The record does not reflect Gonzalez's work schedule or wages. The record does reflect, though, that Gonzalez has not engaged in any sheet metal work in at least four or five years.

The two remaining support employees, whom neither party wished to include in any unit found appropriate, engage in construction work, such as building walls, ceilings, and floors. The record reflects that the Employer refers to the two non-union employees as "Garcia

management.” Other than the fact that they report to Miller, the record does not reflect much more regarding their working conditions.

Other than Gonzalez returning to the Employer as a support employee after serving as a plumber apprentice, the record does not reflect any evidence of transfers between the disputed classifications. Moreover, sheet metal employees work alongside sheet metal employees and plumbers work alongside plumbers. Although the two classifications may have to coordinate to determine, for example, the placement of piping, the record reflects that the supervisors do most of the coordinating. Gonzalez may have contact with the sheet metal employees and plumbers in conducting his day-to-day duties, but the record does not reveal the frequency with which all of the disputed classifications have regular and substantial contact.

All employees: attend the same safety meetings; attend hazardous chemical training; wear white hard hats; receive paychecks originating from the Employer’s main office; are subject to the same code of conduct and other Employer policies/procedures; are subject to random drug testing; and are scheduled for the same breaks and lunch. Brian Robinson makes the ultimate disciplinary decisions with regard to all employees. The record does not reflect how much the non-union employees earn, but it does reflect that the sheet metal employees’ and plumbers’ wages are approximately two or three percent different.

The record reflects that prior to the Employer and sheet metal employees forming a collective bargaining relationship, plumbers were responsible for many of the tasks that the sheet metal employees now undertake. However, following the 8(f) agreement between the Petitioner and Employer, craft jurisdiction lines were defined. The record also reflects that whether the work is sheet metal or plumber, work is generally based on what a particular piece of tubing is being used for. For example, pipe used for drains is typically installed by plumbers whereas pipe

used for exhaust is typically installed by sheet metal workers. Further, although disagreements arise between the sheet metal employees and plumbers over possession of certain work, the Employer endeavors to maintain each classification's separate responsibilities. In 2000, the Petitioner and Plumbers' Union signed a memorandum of understanding stating that in the case of disagreements over work assignments, the Employer is the sole authority in determining which craft the work belongs to.

## **VI. Analysis**

In the instant case, the Employer argues that the plumbers and Gonzalez should be included with sheet metal employees in any unit found appropriate.

The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit, and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB 484 (2001). For a unit to be appropriate, the key question is whether the employees in that unit share a sufficiently strong community of interest. The Board first announced the community of interest concept in *Kalamazoo Paper Box Corporation*, 136 NLRB 134 (1962). "In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration." *The Boeing Company*, 337 NLRB No. 24 (2001) (citations omitted).

I find that the petitioned-for unit shares a sufficient community of interest and that it is an appropriate unit. Further, although neither party took a specific position on the issue, I find that the record is sufficient to support a conclusion that the petitioned-for unit constitutes a craft unit.

The record reflects that sheet metal employees are subject to the same wage rates, hours of work, supervision, and working conditions. They work as a group in completing their tasks and, depending on their skill level, are responsible for the same tasks. Plumbers work different hours than the sheet metal employees and have mid-level supervisors to whom the sheet metal employees do not report. Gonzalez works in the office, unlike the sheet metal employees, and has separate supervision.

Most importantly, though, is that sheet metal employees perform work distinct from the work performed by the plumbers and by Gonzalez. Sheet metal employees generally engage in work where air flows through a particular piece of tubing. They use tools designed for their trade, such as a sheet metal hammer. They have a trade-specific apprenticeship program that trains them in their job. The plumbers' assigned work and training is wholly different than sheet metal employees. Indeed, both the collective bargaining agreements and Employer attempt to delineate what work belongs to sheet metal employees. The Employer's arguments that the plumbers previously undertook sheet metal work, that some duties overlap, and that arguments exist regarding work assignments does not vitiate the fact that sheet metal work and plumber work are separate and do not lend themselves to a community of interest. Gonzalez, moreover, has not engaged in any sheet metal work in at least four or five years.

The petitioned-for unit, additionally, constitutes a homogenous craft unit of skilled journeymen and helpers. In *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), the Board discussed its standard for finding appropriate a separate craft unit. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for unit participate in formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employee; whether the duties of the

petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training. (Footnotes omitted.)

In the instant case, sheet metal employees constitute a craft unit. As described above, they have a four-year apprenticeship program, are assigned work based on their craft, and share common interests, such as wage rates and supervision.

In its brief, the Employer argues that the duties of the sheet metal workers are functionally integrated with those of the plumbers and Gonzalez to the extent that employees in all three classifications make indispensable contributions to the success of the job site. This argument is overstated and, if it were valid, would stand for the proposition that only wall-to-wall units are appropriate. The Board has clearly not adopted such a stance.

Regarding duty overlap, the Employer argues that plumbers and Gonzalez have performed sheet metal work in the past and that the plumbers may share some duties, such as building headers, even today. Even conceding that some duties may overlap, the facts of the instant case bear resemblance to those of *Schaus Roofing And Mechanical Contractors, Inc.*, 323 NLRB 781 (1997), where the Board found a sheet metal unit to be an appropriate craft unit. In this case, the Board held that although some overlap existed between sheet metal employees and pipefitters, the Employer primarily assigned work based on craft and the overlap did nothing to blur the separate identity of the sheet metal work and piping work as to preclude a separate sheet metal unit. *Id.* Such is the case here, where evidence of overlap is inconsequential.

In its brief, the Employer cites *NAPA Columbus Parts*, 269 NLRB 1052 (1984), in support of its position that the appropriate unit should include all GTS employees, specifically,



the plumbers and the two non-union employees. This case is distinguishable from the instant facts. In *NAPA Columbus Parts*, the Board held that a unit of solely warehouse employees was not appropriate and must also include department store employees and jobber delivery drivers based on a significant level of functional integration, contact, and interchange between the disputed classifications. *Id.* However, the Board also noted that the disputed classifications shared the same skills and functions, and that no position required any special training or background. *Id.* Here, sheet metals employees possess a unique skill that can only be learned through formal training.

Finally, the Employer cites *A.L. Mechling Barge Lines*, 192 NLRB 1118 (1971), and *Midwest Abrasive Co.*, 145 NLRB 1665 (1967), in contending that the Board is not bound by a bargaining history resulting from a consent election conducted in a unit stipulated by the parties. These cases, though, do not preclude the Board from considering bargaining history. In the instant case, the fact that the Employer has recognized in an 8(f) agreement that sheet metal employees have always constituted their own, separate unit is telling but not determinative in and of itself.

## **VII. Summary**

In view of the pertinent Board law and the evidence reflected in the record, I find that the employees in the petitioned-for unit share a sufficient community of interest to constitute an appropriate unit. I further find the petitioned-for unit to be a craft unit. As described above, my decision is based on the fact that sheet metal employees are subject to the same wage rates, hours of work, supervision, and working conditions, work side-by-side, receive formal training, and perform unique work based on their craft. The plumbers and Gonzalez may share some working conditions with sheet metal employees, but the nature of their core work is different. In sum, the

Employer has not established that the plumbers and Gonzalez must be included in the unit, and accordingly, I find that they should be excluded from the unit.

### **VIII. Conclusions and Findings**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The parties stipulated, and I find, that the Employer is a Texas corporation with a place of business in Garland, Texas, where it operates a business that performs general and subcontracting services. During the past twelve months, a representative period, the Employer purchased and received at its Garland, Texas facility goods valued in excess of \$50,000 directly from sources located outside the state of Texas. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The Petitioner is a labor organization.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All regular full-time employees doing sheet metal work.

**EXCLUDED:** All other employees, including plumbers and pipefitters, management, clerical workers, guards, and supervisors as defined in the Act.

## **IX. Direction of Election**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the Sheet Metal Workers International Association Local 68.

The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the

election date and who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 819 Taylor Street Federal Office Building, Rm. 8A24 Fort Worth, Texas 76102, on or before April 14, 2005. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at 817-978-2928. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list

is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **X. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5:00 p.m., EST, on April 21, 2005. The request may not be filed by facsimile.

**Dated** April 7, 2005, at Fort Worth, Texas.

/s/ *Ralph Gomez*  
Ralph Gomez, Acting Regional Director  
NLRB Region 16

